IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 13007 of 2004

Between:

M/s. K. Dayakara Rao Soft Drinks, JPN road, Warangal repby Proprietor, Mr. K. Gnanender Rao

.... PETITIONER

AND

1 The Commercial Tax Officer, Warangal
2 The Appellate Deputy Commissioner (CT) Warangal
3 The Additional Commissioner (CT) Legal, Andhra Pradesh,

Nampally, Hyderabad
4 The Commissioner of Commercial Taxes, A.P., Station Road,

Nampally, Hyderabad
(R4 is impleaded as per court order dt. 9-2-2005 in
WPMP 2709 of 2005).

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate Writ or order or direction quashing the order of the 3rd respondent dated 15-5-2004 as unreasonable and unjustified and restrain the 1st Respondent from taking any coercive steps for collection of balance disputed tax of Rs. 3,14,467/- for the assessment year 2000-01 pending disposal of the petitioner's appeal before the Sales Tax Appellate Tribunal in TA No. 706 of 2004 and pass such other order or orders as the Hon’ble Court may deem fit

and proper in the circumstances of the case.

Counsel for the Petitioner: KUM.K.UMA

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage, made the following :

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ORDER: ***(Per Hon'ble Sri Justice M.H.S.Ansari)***

Heard learned counsel for the petitioner as also learned Special Standing Counsel for Commercial Taxes. The grievance of the petitioner is with respect to the order, dated 15.05.2004 passed by the third respondent herein, whereby and whereunder, application for stay of collection of disputed tax pending disposal of the appeal before the learned Sales Tax Appellate Tribunal was disposed of, with a direction upon the appellant (petitioner herein) to pay 50% of the disputed tax. Learned counsel for the petitioner contended that the aforesaid order is passed mainly based upon the Circular of the Commissioner dated 10.11.2003, with respect

to set off of tax on rental value of bottles and it was opined that the appellant is not eligible for such set off.

2. Petitioner has impleaded learned Commissioner of Commercial Taxes as respondent No.4 and also with the leave of the Court placed on record the circular, which has been relied upon in the impugned order.

3. While considering application for stay of collection of disputed tax pending disposal of the appeal, the economic circumstances of the assessee is one of the factors to be considered as also the prospect of the appeal being successful is another factor. In other words, while considering such application, principles applicable to injunctions, namely existence of prima facie case, balance of convenience and factors of irreparable loss govern exercise of discretion whether or not to stay recovery of tax pending disposal of the appeal. In addition, it has to be considered if stay is granted, would that put the tax dues in jeopardy in the event of the appellant being unsuccessful in the appeal.

4. Considered in the light of the said parameters we are of the view that conditional order of stay passed does not warrant interference by us in exercise of our writ jurisdiction under Article 226 of the Constitution of India. It is to be noticed that the circular of the Commissioner dated 10.11.2003 is not in challenge before us and we also clarify that it is open to the petitioner to question the same, if so advised by appropriate proceedings.

5. The writ petition accordingly stands dismissed at the admission stage. No order as to costs.

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M.H.S.ANSARI, J

T.CH.SURYA RAO, J

Dated: 22.02.2005

RAR

1 The Commercial Tax Officer, Warangal
2 The Appellate Deputy Commissioner (CT) Warangal
3 The Additional Commissioner (CT) Legal, Andhra Pradesh,

Nampally, Hyderabad
4 The Commissioner of Commercial Taxes, A.P., Station Road,

Nampally, Hyderabad
5 2 CCs to G.P for Commercial Taxes, High Court Buildings,

Hyderabad (OUT)

6 2 CD copies.